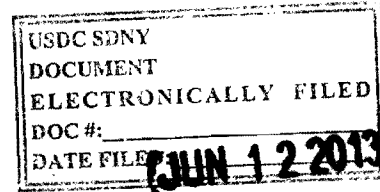


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JOSE SANTANA,

Petitioner,

-v-

MR. BROWN, Acting Superintendent, Sing-Sing
Correctional Facility,

Respondent.
-----X

09 Civ. 5176 (JPO)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

J. PAUL OETKEN, District Judge:

Pro se petitioner Jose Santana (“Petitioner”) brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking review of his jury conviction in New York State Supreme Court, Bronx County, on five counts of Criminal Sale of a Controlled Substance in or near School Grounds. For the reasons that follow, the Report and Recommendation of Magistrate Judge Debra C. Freeman is adopted in full. Accordingly, the petition is dismissed in its entirety, and the Court declines to issue a certificate of appealability pursuant to 28 U.S.C. 2253(c)(1)(A).

I. Standard of Review

“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *accord Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of

the point.”). Accordingly, Judge Freeman’s Report and Recommendation (“R&R”) is reviewed for clear error.

II. Conclusion and Order

Here, after careful review of the record and parties’ submissions, Judge Freeman found that the alleged error by the trial court—the admission over counsel’s objection of purportedly irrelevant and prejudicial evidence relating to an uncharged sale of heroin by another person—did not render Petitioner’s trial fundamentally unfair.

In her opinion, issued February 26, 2013, Judge Freeman informed the parties of their right to file written objections within 14 days of the R&R’s issuance. To date, neither party has filed an objection.

Having found no error on the face of the record, the Court adopts Judge Freeman’s R&R in full. Petitioner’s petition for a writ of habeas corpus is DISMISSED in its entirety, and as Petitioner has not “made a substantial showing of the denial of a constitutional right,” 28 U.S.C. 2253(c)(2), the Court declines to issue a certificate of appealability.

SO ORDERED.

Dated: New York, New York
June 12, 2013



J. PAUL OETKEN
United States District Judge